

**B.     REMARKS**

This Amendment is submitted in response to the Examiner's Office Action dated July 27, 2007. Reconsideration of the application, as presently amended, is respectfully requested. Claims 1 through 48 were originally filed in this application. Claims 20, 24, 35, 37 and 40 through 48 were previously canceled. Claims 18 and 19 have been amended herein for clarity purposes and not for any reason related to the statutory requirements for patentability. Accordingly, Claims 1 through 19, 21 through 23, 25 through 34, 36, 38 and 39 are currently pending.

Favorable reconsideration of this application is respectfully requested for the reasons set forth in these remarks.

***1.     Claim Rejection – 35 U.S.C. § 112, First Paragraph – Claim 25***

Claim 25 is rejected under 35 U.S.C. § 112, first paragraph, on the grounds that there is no support in the specification for the claimed limitation “users of said wireless devices are notified that said primary email system is unavailable.” Applicant respectfully directs the Examiner's attention to Paragraph 23 (“During a full or partial outage, the secondary email system 206 is activated 303. A notice is sent to users alerting them of the outage 304.”), Paragraph 18 (“At the time, or immediately after, email messages 201 have been redirected to the secondary email system 206, a notification is sent to users alerting them that email messages [are] on the secondary email system 206.”), and to FIG. 3. Because there is support in the specification for the claimed limitation, Applicant respectfully traverses the rejection and urges that this rejection be withdrawn.

**2. *Claim Rejection – 35 U.S.C. § 112, Second Paragraph – Claim 1-25***

Claims 1 and 25 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite because it is unclear to the Examiner how email messages received on the secondary system may be synchronized with the messages in the primary system “while” the primary system is unavailable. Applicant respectfully suggests that the Examiner has misread the claim limitation. The limitation in question reads: “synchronizing said email messages received on said secondary email system while said primary system was unavailable with the messages in said primary email system.” Alternatively stated, the claimed method synchronizes (A) email messages received on said secondary email system while said primary system was unavailable with (B) the messages in said primary email system. It appears that the Examiner is reading the limitation to mean that the synchronization itself occurs while the primary server is unavailable. However, a careful reading of the limitation shows that this limitation merely recites what is being synchronized ((A) email messages received on said secondary email system while said primary system was unavailable with (B) the messages in said primary email system), not when the synchronization occurs. For these reasons, Applicant respectfully urges that this rejection with respect to Claims 1 and 25 be withdrawn.

Claims 18 and 19 are also rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Claims 18 and 19 have been amended herein and Applicant respectfully urges that these claims are now in condition for allowance.

**3. Claim Rejection – 35 U.S.C. § 103(a) with Respect to Pickup et al. in view of Easterbrook et al. and further in view of Wallach et al. – Claims 1 – 10 and 25 - 34**

Claims 1-10 and 25-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application No. 2003/0050984 in the name of Pickup, et. al. (“*Pickup*”) in view of U.S. Patent No. 6,886,030 issued to Easterbrook et al. (“*Easterbrook*”) and further in view of U.S. Patent No. 6,292,905 issued to Wallach et al. (“*Wallach*”). Applicant respectfully traverses this rejection and submits that Claims 1-10 and 25-34 are patentable over *Pickup* in view of *Easterbrook* and further in view of *Wallach* for at least the following reasons.

MPEP § 2143.03 states that to establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested in the prior art. *In re Royka*, 490 F.2d 981 (CCPA 1974). Applicant respectfully submits that at least two claim limitations in each of Claims 1-10 and 25-34 have not been disclosed in the prior art.

Applicant’s Claim 1 read as follows (letters have been inserted prior to each element recited in the body of the claim for ease in identification in this Response):

1. A method for providing backup electronic messaging services to wireless devices during outages, comprising:

(A) sending email messages from a primary email system to a user’s wireless device;  
(B) when said primary email system is unavailable, redirecting said email messages from said primary email system to a secondary email system and from said secondary email system to said users wireless device;

(C) notifying said user that said email messages are available on said user’s wireless device through said secondary email system at such time as said redirection of said email messages has been implemented;

(D) at such time as said primary email service becomes available, redirecting said email messages from said secondary email system to said primary email system and from said primary email system to said user’s wireless device;

(E) notifying said user that said email messages are available on said user’s wireless device through said primary email system at such time as said redirection of said email messages has been implemented; and

(F) synchronizing said email messages received on said secondary email system while said primary email system was unavailable with the messages in said primary email system.

A. *No prior art reference teaches the limitation notifying said user that said email messages are available on said user's wireless device through said secondary email system at such time as said redirection of said email messages has been implemented as recited in Element C of Applicant's Claim 1.*

A careful reading of *Easterbrook* reveals that it teaches a system with a primary communications link and a secondary communications link, both of which are active at the same time. *See Easterbrook*; col. 5, lines 36-48. The primary link is bidirectional link and the secondary link is a less expensive unidirectional link. When an email is sent, notification is sent over the less expensive secondary communication rather than the primary communication and the user subsequently retrieves the message from the primary communication system. *See Easterbrook*; col. 5, lines 49-65. The email system described in *Easterbrook* is not a backup system in which email messages are redirected, it is a system in which both links are concurrently active.

Applicant's Element C states the user is notified that "email messages are available on said user's wireless device through said secondary email system." *Easterbrook* simply does not teach a system whereby email messages are delivered over the secondary email system – only the notifications are delivered over the secondary email systems. Once again, *Easterbrook* can not, and does not, teach a system whereby a notification is sent when "email messages are available on said user's wireless device through said secondary email system."

Because all the claim limitations must be taught or suggested in the prior art to establish prima facie obviousness, and the limitation set forth in Applicant's Element C has not been taught or suggested, Applicant respectfully requests that this rejection be withdrawn with respect to Claims 1-10 and 25-34.

B. *No prior art reference teaches the limitation notifying said user that said email messages are available on said user's wireless device through said primary email system at such time as said redirection of said email messages has been implemented as recited in Element E of Applicant's Claim 1.*

As previously discussed, the email system described in *Easterbrook* is not a backup system in which email messages are redirected, it is a system in which both links are concurrently active. Because messages are not redirected, *Easterbrook* can not, and does not, teach a system whereby a notification is sent “at such time as said redirection of said email messages has been implemented.” Because *Easterbrook* does not disclose the redirection of email messages, it does not teach or suggest the limitations set forth in Applicant's Element E of Claim 1. Because all the claim limitations must be taught or suggested in the prior art to establish prima facie obviousness, and the limitation set forth in Applicant's Element E has not been taught or suggested, Applicant respectfully requests that this rejection be withdrawn with respect to Claims 1-10 and 25-34.

C. *No prior art reference teaches the limitation synchronizing said email messages received on said secondary email system while said primary email system was unavailable with the messages in said primary email system as recited in Element F of Applicant's Claim 1.*

*Wallach* teaches a system of fault tolerant networking without hardware mirroring with an enhanced replicated network directory database. *Wallach*; col. 3, lines 39-41. The data contained in the database is the affiliation between the clustered resource and the primary and secondary servers. *Wallach*; col. 3, lines 46-49. When server-resident processes detect a failure

of the primary servers the enhanced database is updated to reflect the failure of the primary database and to change the affiliation of the resource from its primary server to its backup server. *Wallach*; col. 3, lines 50-54.

The Examiner has mischaracterized the process taught in *Wallach*. The Examiner asserts that *Wallach* teaches “synchronizing said email messages received on said secondary email system while said primary email system was unavailable with the messages in said primary email system.” It is clear from the portions of *Wallach* cited by the Examiner, however, that *Wallach* teaches synchronization of the “server to storage device configuration” (*Wallach*; col. 8, lines 5-6) and does not in any way discuss synchronizing individual records in the database. Although *Wallach* uses the word “synchronization” to describe the task being performed, it refers to the synchronization of the resource affiliation records and has no relationship to the synchronization of individual email messages as claimed in Applicant’s Element F.

Moreover, there is little question that *Wallach* constitutes nonanalogous art. The Federal Circuit has stated that “the consistent criterion for determination of obviousness is whether the prior art should have suggested to one of ordinary skill in the art that this process should be carried out and would have a reasonable likelihood of success.” *Rockwell Int’l Corp. v. United States*, 147 F.3d 1358 (Fed. Cir. 1998). To make this determination, a court will “presume knowledge from those arts reasonably pertinent to the particular problem with which the inventor was involved.” *In re Wood*, 599 F.2d 1032 (CCPA 1979). A reference is “reasonably pertinent” if

“it is one which, because of the matter with which it deals, logically would have commended itself to the inventor’s attention in considering the problem. . . . if the reference disclosure has the same purpose as the claimed invention [or] the reference relates to the same problem.” *In re Clay*, 966 F.2d 656 (Fed. Cir. 1992).

*Wallach* teaches synchronization of a database affiliation record upon failure of a primary server in a clustered network. Those skilled in the art will readily realize that this type of system does not serve the same purpose and certainly does not relate to the same problem as providing a continuous email history after a secondary server has received email messages. *Wallach* is simply not reasonably pertinent to the Applicant's invention and is therefore not an appropriate grounds on which to reject Applicant's claim under § 103.

Therefore, because all the claim limitations must be taught or suggested in the prior art to establish prima facie obviousness, and the limitation set forth in Applicant's Element F has not been taught or suggested, and because *Wallach* constitutes nonanalogous art, Applicant respectfully requests that this rejection be withdrawn with respect to Claims 1-10 and Claims 25-34.

***4. Claim Rejection – 35 U.S.C. § 103(a) with Respect to Pickup et al. in view of Easterbrook et al. and further in view of Mosher Jr. – Claims 1 – 10 and 25 - 34***

Claims 1-10 and 25-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Pickup* in view of U.S. Patent No. 6,886,030 issued to Easterbrook et al. ("*Easterbrook*") and further in view of U.S. Patent No. 5,884,328 issue to Mosher, Jr. ("*Mosher*"). Applicant respectfully traverses this rejection and submits that Claims 1-10 and 25-34 are patentable over *Pickup* in view of *Easterbrook* and further in view of *Mosher* for at least the following reasons:

A. *For the reasons set forth above, no prior art reference teaches the limitation notifying said user that said email messages are available on said user's wireless device through*

*said secondary email system at such time as said redirection of said email messages has been implemented as recited in Element C of Applicant's Claim 1.*

Applicant's Element C states the user is notified that "email messages are available on said user's wireless device through said secondary email system." *Easterbrook* does not teach a system whereby email messages are delivered over the secondary email system – only the notifications are delivered over the secondary email systems. Once again, *Easterbrook* can not, and does not, teach a system whereby a notification is sent when "email messages are available on said user's wireless device through said secondary email system." Because all the claim limitations must be taught or suggested in the prior art to establish prima facie obviousness, and the limitation set forth in Applicant's Element C has not been taught or suggested, Applicant respectfully requests that this rejection be withdrawn with respect to Claims 1-10 and 25-34.

B. *For the reasons set forth above, no prior art reference teaches the limitation notifying said user that said email messages are available on said user's wireless device through said primary email system at such time as said redirection of said email messages has been implemented as recited in Element E of Applicant's Claim 1.*

As previously discussed, because messages are not redirected, *Easterbrook* can not, and does not, teach a system whereby a notification is sent "at such time as said redirection of said email messages has been implemented." Because *Easterbrook* does not disclose the redirection of email messages, it does not teach or suggest the limitations set forth in Applicant's Element E. Because all the claim limitations must be taught or suggested in the prior art to establish prima facie obviousness, and the limitation set forth in Applicant's Element E has not been taught or



suggested, Applicant respectfully requests that this rejection be withdrawn with respect to Claims 1-10 and 25-34.

**5. Claim Rejection – 35 U.S.C. § 103(a) with Respect to Pickup et al. in view of Wallach et al. – Claim 11**

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Pickup* in view of *Wallach*. Applicant respectfully traverses this rejection and submits that Claim 11 is patentable over *Pickup* in view of *Wallach* for at least the following reasons.

A. No prior art reference teaches the limitation intercepting email messages responsive to detection of an outage of a primary email system prior to said email messages passing through a company's firewall, wherein said step of intercepting is performed during said outage of the primary email system as recited in Applicant's Claim 11.

As previously discussed, *Wallach* describes a system in which files are directed to a single location and, if that location is unavailable, the files are automatically redirected to a secondary location. It does not teach a process whereby email messages are intercepted and, moreover, it does not suggest or teach a process whereby the messages are intercepted in response to an outage of a primary email system. Also, for the reasons previously stated, *Wallach* is simply not reasonably pertinent to the Applicant's invention and is therefore not an acceptable grounds on which to reject Applicant's claim under § 103. For the foregoing reasons, Applicant respectfully requests that this rejection be withdrawn with respect to Claim 11.

B. No prior art reference teaches the limitation *intercepting email messages responsive to detection of an outage of a primary email system prior to said email messages passing through a company's firewall*, wherein said step of intercepting is performed during said outage of the primary email system as recited in Applicant's Claim 11.

Applicant notes that the Examiner has cited *Pickup*, Paragraph 57 as support for the conclusion that “when a mail server fails, the email is directed to backup mail server from the Internet without going through the firewall that is connected to the mail server.” *See* Office Action, Page 10. However, there is simply no discussion in the citation referenced by the Examiner, or anywhere else in *Pickup*, of when the email messages pass through the company's firewall. While it appears that the Examiner may have made assumptions about the location of the firewall, the legal conclusion of obviousness must be supported by facts. *Graham v. John Deere & Co.*, 383 U.S. 1 (1966). A rejection based on § 103 clearly must rest on a factual basis and these facts must be interpreted without hindsight reconstruction of the invention from the prior art. *Goodyear Company v. Ray-O-Vac Company*, 321 U.S. 275, 279 (1944). Moreover, the Supreme Court has consistently held that “rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *KSR v. Teleflex*, 127 S. Ct. 1727, 1741 (2007)(quoting *In re Kahn*, 441 F.3d 977, 988 (C.A.Fed.2006)).

Because all the claim limitations must be taught or suggested in the prior art to establish prima facie obviousness, and the limitation set forth in Applicant's Claim 11 have not been taught or suggested, and for the reasons stated above that *Wallach* constitutes nonanalogous art, Applicant respectfully requests that this rejection be withdrawn with respect to Claim 11.

**6. Claim Rejection – 35 U.S.C. § 103(a) with Respect to Pickup et al. in view of Wallach et al. and further in view of Weatherby et al. – Claims 12, 13 and 36**

Claims 12, 13 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Pickup* in view of *Wallach* and further in view of U.S. Patent Application no. 2004/005741 in the name of Weatherby et al. (“*Weatherby*”). Applicant respectfully traverses this rejection and submits that Claims 12, 13 and 36 are patentable over *Pickup* in view of *Wallach* and further in view of *Weatherby* for at least the following reasons.

A. For the reasons discussed above, no prior art reference teaches the limitation intercepting email messages responsive to detection of an outage of a primary email system after said email messages pass through a company’s firewall, but before said email messages enter said primary email system, wherein said step of intercepting is performed during said outage of the primary email system as recited in Applicant’s Claim 12.

As previously discussed, *Wallach* describes a system in which files are directed to a single location and, if that location is unavailable, the files are automatically redirected to a secondary location. It does not describe a process whereby email messages are intercepted and, moreover, there is not a process whereby the messages are intercepted in response to an outage of a primary email system. Because all the claim limitations are not taught or suggested in the prior art to establish prima facie obviousness, Applicant respectfully requests that this rejection be withdrawn with respect to Claims 12, 13 and 36.

B. No prior art reference teaches the limitation intercepting email messages responsive to detection of an outage of a primary email system after said email messages pass

**through a company's firewall, but before said email messages enter said primary email system, wherein said step of intercepting is performed during said outage of the primary email system as recited in Applicant's Claim 12.**

The Examiner cites *Weatherby*, Paragraph 59 for support for the position that the email messages are intercepted after the firewall but before the email messages enter the primary email system. However, it is clear that *Weatherby* describes an appliance that resides on the outside (i.e. the Internet-side) of the firewall, not on the company side of the firewall. See *Weatherby*; Fig. 3; Paragraph 59. *Weatherby* does not discuss, teach or suggest a process whereby email messages are intercepted after passing through the company's firewall as claimed by the Applicant. Once again, because all the claim limitations are not taught or suggested in the prior art to establish prima facie obviousness, Applicant respectfully requests that this rejection be withdrawn with respect to Claims 12, 13 and 36.

**7. Claim Rejection – 35 U.S.C. § 103(a) with Respect to *Pickup et al.* in view of *Wallach et al.* and further in view of *Weatherby et al.* – Claims 14 and 38**

Claims 14 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Pickup* in view of *Wallach* and further in view of *Weatherby*. Applicant respectfully traverses this rejection and submits that Claims 14 and 38 are patentable over *Pickup* in view of *Wallach* and further in view of *Weatherby* for at least the following reasons.

A. For the reasons discussed above, no prior art reference teaches the limitation **intercepting email messages responsive to detection of an outage of a primary email system before said email messages leave an Internet mail connector** as recited in Applicant's Claim 14.

As previously discussed, *Wallach* describes a system in which files are directed to a single location and, if that location is unavailable, the files are automatically redirected to a secondary location. It does not describe a process whereby email messages are intercepted and, moreover, there is not a process whereby the messages are intercepted in response to an outage of a primary email system. Because all the claim limitations are not taught or suggested in the prior art to establish prima facie obviousness, Applicant respectfully requests that this rejection be withdrawn with respect to Claims 14 and 38.

**8. Claim Rejection – 35 U.S.C. § 103(a) with Respect to *Pickup et al.* in view of *Wallach et al.* – Claims 15 and 39**

Claims 15 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Pickup* in view of *Wallach*. Applicant respectfully traverses this rejection and submits that Claims 15 and 39 are patentable over *Pickup* in view of *Wallach* for at least the following reasons.

A. *For the reasons discussed above, no prior art reference teaches the limitation intercepting, responsive to detection of an outage of a primary email system, email messages directed to a non-functioning address within the primary email system on a real-time basis, wherein said intercepting is performed during said outage of the primary email system as recited in Applicant's Claim 15.*

*Wallach* teaches a system in which files are directed to a single location and, if that location is unavailable, the files are automatically redirected to a secondary location. It does not teach a process whereby email messages are *intercepted* and, moreover, there is not a process whereby the messages are intercepted in response to an outage of a primary email system. Stated

another way, when an outage of a primary server occurs in *Wallach*, files are automatically sent to a secondary server whereas in the Applicant's invention, messages are intercepted and may be redirected to any number of alternative locations. Also, for the reasons previously stated, *Wallach* is simply not reasonably pertinent to the Applicant's invention and is therefore not an acceptable grounds on which to reject Applicant's claim under § 103. Therefore, since all claim limitations are not taught or suggested in the prior art, the Examiner has not established a prima facie obviousness with respect to Claim 15 or, for similar reasons, Claim 39. As a result, Applicant respectfully requests that this rejection be withdrawn with respect to Claims 15 and 39.

B. *No prior art reference teaches the limitation intercepting, responsive to detection of an outage of a primary email system, email messages directed to a non-functioning address within the primary email system on a real-time basis, wherein said intercepting is performed during said outage of the primary email system as recited in Applicant's Claim 15.*

Applicant is claiming a process of “intercepting . . . email messages directed to non-functioning addresses within the primary email system.” In the process taught by *Pickup*, all email messages are sent to the redirection server. *Pickup* in no way contemplates intercepting only the email addresses that are directed to non-functioning email addresses. Moreover, in *Pickup*, email messages are redirected to the backup server “in the event of catastrophic failure on the part of the [primary] mail server.” *Pickup*, Paragraph 57. In the event of such a catastrophic failure, “the backup server stores and processes any mail until the primary mail server is brought back on line.” *Id.* The fail-over in *Pickup* is an all-or-nothing occurrence. Either the primary mail server has suffered a catastrophic failure or it is operational. There is no

discussion in *Pickup* of intercepting email messages on the primary mail server on an address-by-address basis as is claimed by the Applicant. The requirements for intercepting and redirecting email messages on an address-by-address basis are considerably different than the requirements for intercepting email when the server has suffered a catastrophic failure. *Pickup* simply does not disclose a method by which email messages may be intercepted on an address-by-address basis. Accordingly, *Pickup* does not teach each and every element of Applicant's Claim 15 or, under similar reasoning, Claim 39. As a result, Applicant respectfully requests that this rejection be withdrawn with respect to Claims 15 and 39.

**9. Claim Rejection – 35 U.S.C. § 103(a) with Respect to *Pickup et al.* in view of *Wallach et al.* – Claim 16**

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Pickup* in view of *Wallach*. Applicant respectfully traverses this rejection and submits that Claim 16 is patentable over *Pickup* in view of *Wallach* for at least the following reasons.

A. *For the reasons discussed above, no prior art reference teaches the limitation intercepting, responsive to detection of an outage of a primary email system, email messages intended for the primary email system within an email application designed to inspect email message traffic as recited in Applicant's Claim 16.*

*Wallach* teaches a system in which files are directed to a single location and, if that location is unavailable, the files are automatically redirected to a secondary location. It does not teach a process whereby email messages are *intercepted* and, moreover, there is not a process whereby the messages are intercepted in response to an outage of a primary email system. Also,

for the reasons previously stated, *Wallach* is simply not reasonably pertinent to the Applicant's invention and is therefore not an acceptable grounds on which to reject Applicant's claim under § 103. Therefore, since all claim limitations are not taught or suggested in the prior art, the Examiner has not established a prima facie obviousness with respect to Claim 16. Consequently, Applicant respectfully requests that this rejection be withdrawn with respect to Claim 16.

*B. For the reasons discussed above, no prior art reference teaches the limitation intercepting, responsive to detection of an outage of a primary email system, email messages intended for the primary email system within an email application designed to inspect email message traffic as recited in Applicant's Claim 16.*

*Pickup* does not teach or disclose how messages are redirected and, more specifically, there is no discussion in *Pickup* of an email application that inspects email message traffic. If the redirection in *Pickup* is accomplished through a software application, it could be, and most likely is, an application that simply redirects messages from a failed server to a backup server. By contrast, Applicant is claiming "email messages intended for the primary email system within an email application designed to inspect email message traffic." There is simply no discussion or teaching in *Pickup* of an application designed to inspect email message traffic. Accordingly, *Pickup* does not teach each and every element of Applicant's Claim 16. Since all claim limitations are not taught or suggested in the prior art, the Examiner has not established a prima facie obviousness with respect to Claim 16 and Applicant respectfully requests that this rejection be withdrawn with respect to Claims 16.



**10. Claim Rejection – 35 U.S.C. § 103(a) with Respect to Pickup et al. in view of Wallach et al. and further in view of Katsikas– Claim 17**

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Pickup* in view of *Wallach* and further in view of U.S. Patent Application no. 2003/0191969 in the name of Katsikas (“*Katsikas*”). Applicant respectfully traverses this rejection and submits that Claim 17 is patentable over *Pickup* in view of *Wallach* and further in view of *Katsikas* for at least the following reasons.

A. For the reasons discussed above, no prior art reference teaches the limitation *intercepting, responsive to detection of an outage of a primary email system, email messages intended to be delivered to said primary email system to an SMTP host* as recited in Applicant’s Claim 17.

*Wallach* teaches a system in which files are directed to a single location and, if that location is unavailable, the files are automatically redirected to a secondary location. It does not teach a process whereby email messages are *intercepted* and, moreover, there is not a process whereby the messages are intercepted in response to an outage of a primary email system. Also, for the reasons previously stated, *Wallach* is simply not reasonably pertinent to the Applicant’s invention and is therefore not an acceptable grounds on which to reject Applicant’s claim under § 103. Therefore, since all claim limitations are not taught or suggested in the prior art, the Examiner has not established a prima facie obviousness with respect to Claim 17. Consequently, Applicant respectfully requests that this rejection be withdrawn with respect to Claim 17.

B. No prior art reference teaches the limitation wherein said redirected email messages have a low-priority designation as recited in Applicant's Claim 17.

*Pickup* does not teach or disclose designating certain messages as low priority. The Examiner correctly points out that, in *Pickup*, "all email messages are redirected to the backup mail server regardless of the priority." However, that is exactly why *Pickup* does not teach this Element of Applicant's claim. Applicant claims a method wherein all redirected email messages have a low-priority designation. *Pickup* does not teach a system in which all of the redirected email messages have a designated priority. Accordingly, *Pickup* does not teach each and every element of Applicant's Claim 17. Since all claim limitations are not taught or suggested in the prior art, the Examiner has not established a prima facie obviousness with respect to Claim 17 and Applicant respectfully requests that this rejection be withdrawn with respect to Claim 17.

**11. Claim Rejection – 35 U.S.C. § 103(a) with Respect to *Pickup et al.* in view of *Wallach et al.* and further in view of *Easterbrook et al.* – Claim 18**

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Pickup* in view of *Wallach* and further in view of *Easterbrook*. Applicant respectfully traverses this rejection and submits that Claim 18 is patentable over *Pickup* in view of *Wallach* and further in view of *Easterbrook* for at least the following reasons.

A. No prior art reference teaches the limitation changing a domain name system designation of a primary email system responsive to detection of an outage of the primary email system as recited in Applicant's Claim 18.

The Examiner asserts that *Pickup* teaches that a “domain name needs to be changed in order to redirect an email message to a different server.” However, this is not necessarily the case. For example, *Wallach* teaches that “when the primary server fails, the secondary server is immediately substituted as the primary server with identical configurations.” *Wallach*; col. 2, lines 28-30. In such a case, the domain name is not changed (as the Examiner has assumed) but, instead, the secondary server assumes the identity of the primary server. The Examiner can not assume that a process described broadly in the art reads on the specific process recited in a claim. The legal conclusion of obviousness must be supported by facts. *Graham v. John Deere & Co.*, 383 U.S. 1 (1966). A rejection based on § 103 clearly must rest on a factual basis and these facts must be interpreted without hindsight reconstruction of the invention from the prior art. *Goodyear Company v. Ray-O-Vac Company*, 321 U.S. 275, 279 (1944). For the foregoing reasons, Applicant respectfully requests that this rejection be withdrawn with respect to Claim 18.

B. *No prior art reference teaches the limitation notifying the intended recipient of said email messages that said messages are available on said recipient’s wireless device through said alternate facility at such time as said redirection of said email messages has been implemented as recited in Applicant’s Claim 18.*

The Examiner asserts that *Easterbrook* teaches that the email system notifies the user when the email system is available and sends the email to the user. However, *Easterbrook* does not teach that the user is notified that the email messages are available on the user’s wireless device.

As previously discussed, *Easterbrook* reveals that it teaches a system with a primary communications link and a secondary communications link, both of which are active at the same time. *See Easterbrook*, Col. 5, lines 36-48. The primary link is bidirectional link and the secondary link is a less expensive unidirectional link. When an email is sent, notification is sent over the less expensive secondary communication rather than the primary communication and the user subsequently retrieves the message from the primary communication system. *See Easterbrook*, Col. 5, lines 49-65. The email system described in *Easterbrook* is not a backup system in which email messages are redirected, it is a system in which both links are concurrently active. Because messages are not redirected, *Easterbrook* can not, and does not, teach a system whereby a notification is sent “at such time as said redirection of said email messages has been implemented.” Since all claim limitations are not taught or suggested in the prior art, Applicant respectfully requests that this rejection be withdrawn with respect to Claim 18.

***12. Claim Rejection – 35 U.S.C. § 103(a) with Respect to Pickup et al. in view of Wallach et al. and further in view of Easterbrook et al. – Claims 19 and 21***

Claims 19 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Pickup* in view of *Wallach* and further in view of *Easterbrook*. Applicant respectfully traverses this rejection and submits that Claims 19 and 21 are patentable over *Pickup* in view of *Wallach* and further in view of *Easterbrook* for at least the following reasons.

A. *For the reasons discussed above, no prior art reference teaches the limitation delivering, via said alternate email address, the email messages to said wireless device*

*responsive to detection of an outage of a primary email system as recited in Applicant's Claim 19.*

*Wallach* teaches a system in which files are directed to a single location and, if that location is unavailable, the files are automatically redirected to a secondary location. It does not teach a process whereby email messages are *intercepted* and, moreover, there is not a process whereby the messages are intercepted in response to an outage of a primary email system. Also, for the reasons previously stated, *Wallach* is simply not reasonably pertinent to the Applicant's invention and is therefore not an acceptable grounds on which to reject Applicant's claim under § 103. Therefore, since all claim limitations are not taught or suggested in the prior art, the Examiner has not established a prima facie obviousness with respect to Claim 19 or, for similar reasons, Claim 21. As a result, Applicant respectfully requests that this rejection be withdrawn with respect to Claims 19 and 21.

***13. Claim Rejection – 35 U.S.C. § 103(a) with Respect to Pickup et al. in view of Wallach et al. and further in view of Easterbrook et al. and further in view of Katsikas – Claims 22 and 23***

Claims 22 and 23 depend from Claim 21. Applicant respectfully traverses this rejection and submits that, for the reasons set forth above with respect to Claim 21, this rejection be withdrawn with respect to Claims 22 and 23.

**C. CONCLUSION**

In view of the foregoing remarks, the Applicant respectfully submits that all pending claims are allowable over the art of record and respectfully requests a timely Notice of

Allowance. If the Examiner does not believe that the pending claims are in a condition for allowance, Applicant respectfully requests a telephonic interview with the Examiner to clarify certain issues raised by the Examiner before the Examiner issues another Office Action.

Please direct all future correspondence for the above-identified application, and direct all telephone calls, to:

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Respectfully submitted,

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